

Adopted April 25, 2008

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall

15C Springfield Road

New Lisbon, New Jersey

April 11, 2008 12 noon

MINUTES

MEMBERS IN ATTENDANCE: Chairperson Betty Wilson, Vice-Chairman Norman Tomasello, Candace Ashmun (via telephone), Leslie Ficcaglia, Stephen Lee, Ed Lloyd, Robert W. McIntosh, John Haas (1st Alternate), Robert Hagaman (2nd Alternate) and Paul E. Galletta (3rd Alternate)

OTHER COMMISSIONER PRESENT: Daniel M. Kennedy

STAFF PRESENT: John Stokes, Larry Liggett, Susan Grogan, Stacey Roth, Tom Stanuikynas, Paul Leakan and Betsy Piner

Chairperson Wilson called the meeting to order at 12:35 p.m. Commissioner Ashmun joined the meeting by telephone. Mr. Stokes read the Open Public Meetings Act statement.

1. Adoption of minutes from the March 28, 2008 CMP Policy and Implementation Committee meeting.

Staff distributed revised language for p. 10 of the draft minutes and noted the correction of a typographical error on page 9 (*preclude* rather than *prelude*). Commissioner Ficcaglia said that Commissioner Haas' name was mis-spelled on page 12 (last sentence before Item 4. Public Comment) and asked that the following sentence be inserted on page 10: "*Commissioner Ficcaglia expressed concern with permitting private ownership of the reserved parcel.*"

Commissioner Ficcaglia moved the adoption of the minutes of the March 28, 2008 CMP Policy and Implementation Committee meeting with the changes presented this morning. Commissioner Galletta seconded and all voted in favor.

2. Continued discussion of proposed CMP amendments related to cluster development in the Forest and Rural Development Areas

Mr. Stokes led a discussion of his April 3, 2008 memorandum, including the attached Potential Clustering Principles, and noted that it appeared that the Committee had come to a general consensus on all the principles but three: (1) should clustering be mandatory in both the FA and RDA or should municipalities be provided the option of including the RDA in the program?; (2) should the municipalities be given the option to provide a

density bonus for assembled parcels, depending upon when that assemblage took place (i.e., before or after the effective date of a clustering program?); and (3) what ownership, easements and permitted activities would be allowed for the protected lands of clustered development occurring on active agricultural lands?

Mr. Stokes reminded the Committee that these discussions were in response to the initial set of principles that he had recommended and the questions and concerns expressed by the Committee at the two previous meetings (February 29, 2008 and March 28, 2008).

Principle #3. The first principle to be discussed (#3) related to whether or not the municipalities should be obligated to include the RDA in a clustering program.

In response to a question from Commissioner Lloyd, staff responded that there are approximately 140,000 acres in the FA and 80,000 acres in the RDA of privately owned vacant land.

Mr. Stokes said that, at the next full Commission meeting (May 9, 2008), staff would provide an initial overview of the Ecological Integrity Assessment (EIA) study. Based on the study results, it was anticipated that certain management area boundaries would be tweaked somewhat and that those areas of the RDA that were of higher ecological value were likely to be designated as FA. He said that looking ahead, in a year or so, the land use designations will be more refined providing the Commission with even more confidence that the boundaries are appropriate.

Referencing Mr. Stokes January 18, 2008 memo, (table on page 6, “Clustering Opportunities of Existing Parcels in the Pinelands”), Commissioner Lee asked why the Commission would *not* want to take the opportunity to preserve those lands. He said that if clustering were not made mandatory in the RDA, the Commission would be giving up an opportunity to preserve land. He said that it was intuitively obvious that clustering in the remaining vacant RDA lands would create pockets of suitable habitat.

Mr. Stokes said that his original recommendation had called for mandatory clustering in *both* the FA and RDA and he was not going to argue in support of something that was against staff’s original proposal. But, since the Committee had indicated an interest in perhaps allowing municipalities the option of excluding the RDA from a clustering program, his memo was a response to that discussion; he himself would prefer that a clustering provision be mandatory for both the FA and the RDA.

The Committee agreed that they were in accord with the recommendation to include both FA and RDA in a mandatory clustering program.

Principle #8 the next principle for discussion (#8) focused on the assemblage of properties. Mr. Stokes said that if the Commission is serious about having clustering occur, then there must be a bonus to serve as an incentive. The larger the property, the better the result of clustering. Information provided previously by Mr. Liggett had indicated that there are few large tracts of land in the FA and RDA under single

ownership, hence the need to assemble larger parcels. Mr. Stokes said that the bonus would relate to the assembling of land, coupled with a bonus relating to zoning. Generally the less dense zoning indicates properties of higher ecological value. Mr. Stokes said that the original proposal had made no distinction on bonuses based on *when* the lands were assembled. Under a clustering provision, the Commission would review the application according to the parcel that was submitted in the application, regardless of when assembled. Principle #8 offered to allow the municipalities to determine if a bonus should apply based on *when* the lands were assembled. From a regional standpoint, the Commission would have a difficult time determining the history of land ownership for the component properties of an assembled parcel. But, if the municipalities were able to verify the ownership, that might be a choice they would like to make. Mr. Stokes said that if a municipality felt strongly and had the means to implement a bonus program for lands assembled, it might be an option that could be granted to them.

Commissioner Lee concurred that it could be difficult to trace land tenure and ownership, as evidenced by some of the applications for Pinelands Development Credits on assembled lands, particularly after the passage of a number of years.

In response to a comment by Commissioner Lloyd, Mr. Stokes said that the larger lots are clearly more valuable than smaller ones, e.g. a 20-acre estate lot vs. 1-acre lots.

Commissioner Lee said that one of the first questions he had asked during the initial clustering discussion was, What about the large lots? If clustering were mandatory, the value of the land is greater for large lots than for small.

Chairperson Wilson said that the bonus is a means of increasing the value of that land.

The Committee determined that the language relating to a bonus for assemblage should eliminate any reference to relationship with the effective date of the clustering program rules. Mr. Stokes said that a municipality might believe that it had special circumstances and might request that pre-Cluster Program assemblage not be rewarded. Commissioner Lee requested that the rule proposal background material indicate that the Committee had discussed the assemblage/timing issue and indicated that it could be considered on a case-by-case basis, during the municipal conformance process.

Principle #16 Mr. Stokes said that this principle deals with what happens to the “protected lands” when clustering occurs on active agricultural lands. He said that there are two issues: that the land will be protected through an easement regardless of who owns it; what will be allowed on the protected land within the cluster.

Mr. Stokes said that, in the Pinelands, some 5500 acres within the Forest Area, representing roughly 2% of the land, are in upland (field) agricultural use. The original principle recognized that these agricultural uses can continue and expand up to 50% as long as the four conditions are met relating to: the use of wastewater technologies capable of reducing pollutant load, the preparation of a farm conservation plan, the

limitation of impervious surface to 3% of the parcel, and right-to-farm language in the deeds of all residential development within the cluster.

Mr. Stokes said that Commissioner Kennedy had expressed concerns regarding the lands in agricultural use and noted that a farmland conservation plan might not be the appropriate governing document; rather a Resource Management System Plan (RMSP), prepared according to NRCS guidelines, a necessary requirement if a farmer were to expand beyond 3% of impervious cover, would better protect the resources of the protected lands. The RMSP deals more comprehensively than a farmland conservation plan with issues such as air, water, habitat, soil, etc. It would require Pinelands Commission approval as part of the application process.

Commissioner Ashmun said that she was troubled by the use of the term “impervious” as the CMP recognizes “impermeable.” Also, she asked if these requirements related only to expansion of agriculture within the Forest Area.

Mr. Stokes responded that the definitions would be clarified during the rulemaking process and that yes, the conditions for an easement on agricultural lands in the FA would apply whether or not any expansion occurred.

Commissioner Hagaman said that based on his own 62 acre farm, the 3% impervious limit would allow only 2 acres of impervious surface and would preclude him from developing greenhouses. He would have to “fit them in” to the rest of the pervious surface including his home, barns, outbuildings etc.

Mr. Stokes responded that the expansion beyond 3% is what triggers the requirement for a RMSP Plan; expansion is not prohibited.

In response to Commissioner Lloyd’s concern that 50% or more impervious surface could be allowed if an RMSP Plan were provided, Mr. Stokes said that all CMP environmental standards will still apply and that the Commission would review the RMSP. The amount of impervious surface proposed will trigger the Commission’s involvement and will strengthen the review of agricultural operations, particularly as related to stormwater and water quality.

In response to a question from Commissioner Ashmun regarding whether or not one would be allowed to cut down all the trees, Commissioner Lee said that although he had never prepared an RMSP, the forest resource is one of the elements to be addressed in the Plan.

Commissioner Lloyd said that the “existing” agricultural use must be determined now; and he suggested that a date of January 1, 2008 be used. If a farm doesn’t exist today, the Commission doesn’t want the landowner to clear the forest, establish a farm, and then come in to cluster development, perhaps even with a bonus. He said that the date used should not be that of the rule adoption.

Mr. Stokes asked, and Commissioner Lloyd confirmed, that it was not the type of use but the amount of the area in use that was of concern.

Mr. Stokes said the date issue was one that the Committee would discuss during the preparation of the rules. Commissioner Lee said that he believed that the date needed more discussion and Commissioner Lloyd said that he had raised it here today as he believed that the Committee was recognizing what exists “today.”

Commissioner Lee said that the prime agricultural soils in the Forest Area are a resource. The Pinelands is an evolving tapestry and not a snapshot in 2008. Why would one want to stop the expansion of agriculture on these soils?

Commissioner Lloyd responded that he did not want to see clustering as an incentive to clearcutting.

Chairperson Wilson said that the goal of today’s meeting is to agree to the principles. She stated that the Committee agreed that *impervious* must be defined.

Commissioner McIntosh stated that he was unfamiliar with the NCRS guidelines and hoped that they would not conflict with the CMP.

Mr. Stokes said that the NRCS guidelines are very extensive and require a long list of resource-based issues to be addressed.

Commissioner Kennedy said that these plans indicate that the property is still subject to all the laws; there is no reason why the CMP would not be enforced on a farm with an RMSP. He said that he thought that some of the language should be based on what the Highlands is currently proposing.

Mr. Stokes said that the Highlands Council is proposing a number of changes, some of which deal with the same questions that the Commission is currently asking about clustering.

Mr. Liggett said that the RMPS deal with 5 resource based issues, with about 80 qualities that need to be addressed. These include water, soil, air, plants and animals. The Highlands Council has required these plans for impervious cover but, in recognition that their focus is on water, the Highlands is now considering requiring for clustering only that a RMSP focus on water and not addressing the other issues unless impervious surface is increased.

Commissioner Ashmun said that the Highlands Council is a long way from actively proposing any changes.

Commissioner Kennedy said that the RMSP is the highest level plan; if the goal is to have real stewardship, it is most likely the best tool to protect open space. Also he said

that any references (in Principles #15 & 16) to the county or state agriculture “committee” should be corrected to say “Board”.

Commissioner Ashmun said that she supported moving forward with the preparation of a rule proposal. Commissioner Ashmun terminated the phone call.

Commissioner Lloyd said that he still had concerns about the level of impervious surface and Commissioner Ficcaglia said that she had corrected the Minutes of the March 28, 2008 meeting because, except for the farmer on whose property the clustering was occurring, she was concerned with the idea of only a single landowner owning the easement.

The Committee discussed the “right to farm” language that should appear in the deeds for all residential properties within the cluster development when a portion will remain farmed. Commissioner Lloyd said that, under the Pinelands Protection Act, the Commission is not bound to “right to farm” provisions. Commissioner Lee said that the “right to farm” language advises the homeowners so that they are aware of the presence of a farm and the associated odors, dust, etc.

Mr. Stokes said that if there is an existing agricultural use, even nominal in scale and scope, it will be allowed to continue and expand. If the Commission does not want to promote conflict, then the new homeowners should be aware of right to farm provisions. Inappropriate farming practices are not protected under “right to farm.”

The Committee determined that the proposed language should indicate that each deed to the residential lots within the cluster reflects the Right to Farm provisions.

Commissioner Lee echoed Commissioner Ficcaglia’s earlier comment and said that it is best to keep the best steward of the land living on the land; the farmer is the best steward.

Commissioner Ficcaglia said that foresters want to clear land, not protect habitat. She said that a forestry management plan does not always mean good stewardship.

Mr. Stokes said that it would work well to provide the municipalities the flexibility to determine stewardship arrangements, whether it be a farmer or another individual.

Commissioner Ficcaglia moved that the staff draft a clustering rule proposal based on the principles discussed by the Committee. Commissioner McIntosh seconded.

Commissioners Ficcaglia, McIntosh, Haas, Wilson, Tomasello, Ashmun voted in the affirmative. Commissioner Hagaman voted against the motion. Commissioner Lloyd abstained. Commissioner Lee left the meeting as the vote was being taken and was determined absent. (Neither Commissioner Galletta, nor Commissioner Kennedy, voted.)

3. Public Comment

Emile DeVito with the New Jersey Conservation Foundation (NJCF) said that NJCF has some 30 years experience in developing and enforcing easements and that they are difficult to enforce and a financial burden. He said that he agreed with Commissioner Lloyd's concern with setting a date in terms of existing agriculture. He said that with 4,300 acres of agriculture in the FA, clustering could allow an additional 2,500 acres to be farmed. He said that no one is taking away the right to farm but farmers should not be allowed to increase the impervious cover and subdivide for clustering development as that would be double-dipping. The point of the clustering proposal is to stop the forests from being fragmented.

Mr. Fred Akers, Administrator of the Greater Egg Harbor Watershed Association, said that his interest was in the protection of the Forest Area and water quality but he was hearing more today about protection of farmers. He said that clustering 60 houses on 60 acres of a 200 acre parcel, combined with active agriculture, will increase the pollutant load on a parcel more so than the standard 60 units on 3.2 acre lots as currently permitted in the RDA.

Mr. Akers also referenced the zoning change in Buena Vista that had occurred some years ago involving approximately 800 acres in the FA and APA. He said that the change from FA had all been connected to active farms and that the rezoning had served as a mechanism for protecting these farms.

Ms. Jaclyn Rhodes, with the Pinelands Preservation Alliance (PPA) said that PPA agreed with the comments made by Emile DeVito. She referenced the discussion that developers have said that land values drop with clustered development. She said that there is some literature that indicates that land values may increase as buyers want to live near open space.

4. Other Items of Interest

There being no other items of interest, the meeting adjourned at 2:20 p.m. (moved by Commissioner Haas and seconded by Commissioner Ficcaglia).

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SUMMARY

The Committee **adopted the Minutes of the March 28, 2008** meeting with a few revisions

The Committee directed staff to proceed with developing a **rule proposal for clustered development in the Forest and Rural Development Area**, based on a series of principles as discussed and revised over three meetings.

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